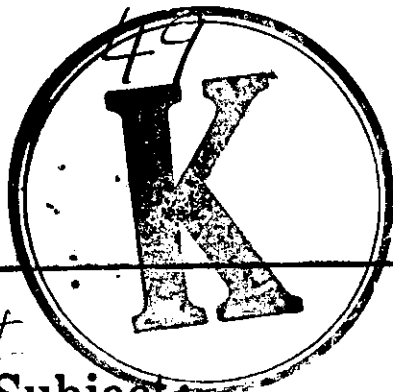


1948

File No. A.E.C. / 48.
49
Pt. II



Legal DEPARTMENT
C BRANCH

7/6 Subject:—

Papers relating to
Administrative Enquiry Committee.

(For previous pps. pl. see pt. I)

P-43
E

File No. A.E.C. / 48 Part II
49
Std. Sectt. Slip 24 B e.

391-E

1.

(Copy of Secretary, Finance Department's note dated 11th June 1948 approved by Government).

Procedure for implementing the recommendation of the Administrative Enquiry Committee.

Revised copies of the Report of the Administrative Enquiry Committee have been furnished to all Honourable Ministers and Secretaries. Printed copies are ~~expected~~ expected to be available within few days. It is now necessary to consider the procedure the Committee emphasise the need for "early consideration and Implementation" of the Report and for "bold action on the highest level."

It is submitted that the aim should be (i) to reach decisions on all the recommendations by the end of September 1948, at the latest, and (ii) to implement the decisions by the end of the financial year, viz. by 31st March 1949, at the latest. ~~embodied~~ The following proposals are made with this object in view:-

(i) The Finance Department should be responsible for watching the disposal of the Recommendations; in particular, this responsibility should rest on the Financial Advisor (Mr. Santos). It will, however, be the responsibility of the department concerned with a particular recommendation, to examine necessary, with out or departments of the Secretariat and/or the concerned Head of department under the Secretariat, and so obtain the orders of Government on the recommendation. Where a recommendation concerns two or more departments, the responsibility for taking the orders of Government will usually be that of Finance Department or Political and Services Department.

that recommendation, in consultation, if

(ii) When a department is opposed to any proposal on grounds which are not fully stated in the Report, the file should be marked for the Financial Advisor before submission to the Ministers. He will be in a position to state whether the particular grounds of objection cited by the department were discussed by the Committee and, if so, why they rejected those grounds.

(iii) No proposal should be rejected without obtaining the orders of the Cabinet.

(iv) In order to assist quick disposal, meetings of Secretaries, presided over ~~was~~ by the Chief Secretary and with the Financial Advisor as convener, should be held from time to time. This will also enable discussion of questions of importance or of common interest. The frequency of the meetings and other points of procedure can be settled at the first meeting, which should be held not later than 15th July 1948.

(v) With a view to enable the Finance Department to watch the progress of disposal, the departments should send to Finance Department every fortnight on and after 31st July 1948 a statement of action taken in the following form:-

Serial No.	Paragraph of the Committee's Report and the substance of the recommendation	Stage of considerati- on.	Probable date of disposal.
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3. If these proposals are approved, copies of the note will be forwarded to all Honourable Ministers and Secretaries.

No. 6745/33-X.

Finance Department,
Bombay Castle, 19th June 1948.

Forwarded for information and guidance.

By order of the Governor of Bombay,

80/-

For Secretary to Government
Finance Department.

Madhav Raokadam.

29/5. c/5.

Report of the Administrative
Enquiry Committee

Implementation of the
recommendations contained in---

GOVERNMENT OF BOMBAY.
Finance Department,
Circular Memorandum No. 6745/33.
Bombay Castle, 30th June 1948.

The report of the Administrative Enquiry Committee has been published and copies have been distributed in accordance with Government Circular No. 6745/33, Finance Department, dated the 23rd June 1948. The procedure for implementing the Committee's recommendations has already been laid down in Financial Secretary's note dated 11th June 1948 (approved by Government), copies of which have been endorsed to all Secretaries under this Department No. 6745/33-X, dated 19th June 1948. All Secretaries to Government are requested to examine the recommendations with which their Departments are concerned and in particular those shown in the appended distribution list. In order to enable this Department to watch the progress of disposal, it is further requested that, as prescribed in item(v) of paragraph 2 of the note on procedure statements of the action taken may be sent every fortnight to this Department. The following further two columns may be added to the prescribed form of statements- to be filled in when action is completed.

Orders passed with their
No. and date.

Not savings or additional expenditure to Government.	
Annual	Non-recurring.
recurring.	

2. The date of the first meeting of Secretaries will be communicated in due course.

By order of the Governor of Bombay,

ed/-
Financial Adviser to Government.

Madhav Rookadan,
28/5/ c/5.

Accompaniment to Circular Memorandum No. 6745/33, Finance Department, dated 30th June 1948.

Recommendations numbered as in summary of
Recommendations--- Appendix F to the Report.

Figures in brackets refer to paragraphs of the Report.

Department concerned.

Recommendations.

Legal Department.

25(98), 26(8) and 253(407)

Madhav Raskadam,
20/5/ c/5.

Submitted.

This relates to the recommendations of the Administrative Enquiry Committee, and the Secretariate Departments are requested to examine these recommendations with which they are concerned.

2. The L.D. is concerned with regard to the recommendations made in paras 25(98), 26(98) and 253(407), of the said report.

Paras. 25(98) and 26(98). The following three points are for consideration:-

(1) Transfer of 'Justice' from H.D. to L.D.

There is no objection to the transfer of 'Justice' from the H.D. to L.D. as suggested by the A.E.C. It is presumed that along with the transfer of this subject to this Department the personnel attending to this work at present will also be transferred to this Department. In that case the question of their seniority will have to be determined before this transfer. In this connection it may be pointed out that the posts of Upper Division in other Departments of the Secretariat are filled in Graduates and not necessarily by Law Graduates. It is possible therefore that the members at present working in the H.D. in 'Justice' Branch are likely to be only Graduates. It will not therefore be possible for them to work in the A and B Branches of this Department, unless the H.D. could supply all Law Graduates with experience of this work. But as they ~~are~~ are specially recruited for Upper Division they would naturally expect their due promotions in course of time. It would, therefore, be necessary to make this Branch a separate

entity (so far as the present incumbents are concerned) just as it is proposed to do in the case of A and B Branches in the reorganisation scheme. In course of time when they vacate their posts by reason of their retirement or otherwise they may be filled in by Law Graduates. If the course suggested above is not adopted it is likely that a member of that branch who has put in more years service than any of the present members of A and B Branches of this Department would claim seniority. This will prejudice the prospects of the members of the L.D.

Lastly it may be pointed out that if the recommendations of the A.E.C. is accepted the work of the Establishment Branch (c) and the Record Branch (D) will be increased. The Establishment Branch will have to attend to the Budget work of the Sub-Judges, District Judges Etc. The despatch and receipt clerks' work will also be increased to a considerable extent in Record Branch. It will therefore be necessary to supplement the C & D Branches with one senior Asstt, one Junior Assistant, 4 Clerks and 2 Typists.

(2) Constitution of a separate Bureau of Legislative Drafting etc. Recently a post of Draftsman and Addl. Secy. has been ~~made~~ created in L.D. and the work of drafting Bills and subordinate legislation had been exclusively given to this officer. The suggestion of the A.E.C. in this respect has been already accepted by this Department and brought into effect.

(3) Appointment of Legal Assistants in the other Departments. It is presumed that it is the intention of the A.E.C. to suggest that these Assistants should be of the status of a Superintendent. It is neither desirable nor possible for a Junior Assistant or even a Senior Assistant to give legal advice

legal advice to the Secretaries of the Departments even on simple cases whenever necessary. If the object for which the suggestion has been made is to be achieved, then it is necessary to create the posts of Superintendents preferably Senior Superintendents instead of mere Junior Assistants or Senior Assistants. It may, however, be observed that by creating these posts it will not appreciably reduce the number of references to this Department and consequently it will not be possible to surrender any posts of Assistants.

Para.

/ 253(407): Financial implications of legislative proposals.

This appears to be entirely a matter for the F.D. to deal with. However 'D' Branch may see.

(Thro 'D' 'B' & 'A' Branches)

sd/-

20/7.

S S sd/-
20/7. Paragraphs 139 and 140 of the A.E. Committee's Report pertain to all Depts. of the Secretariat and as such the F.D. has shown them against the P. & S.D. for necessary action in the statement at p. 7 ante. That Deptt while taking action ~~on~~ on these paragraphs may refer and obtain the remarks from all Depts. of the Sectt. when this Deptt. will state whether or not the changes suggested in para. 139 of the Report can be brought into effect in the Registry Branch of the Legal Department which does not ~~xxx~~ function according to the procedure laid down in the Maxwell's Manual of Office Procedure, like other Departments of the Secretariat

sd/-

21/7.

Three main recommendations seem to have been made by the Administration Enquiry Committee in regard to L. D. They are -----

They are discussed below and the views of the office thereon are stated.

It is ~~xxx~~ recommended in para 98(5) of the Report that as a corollary to the proposed separation of the judiciary from the executive, justice should be transferred from H.D. to L.D. The work falling under this head in H.D. is done by A and B branches each consisting of 1 supdt., 1 S.A., 2 J. As. and 1 clerk. A ~~Branch~~ Branch deals with recruitment, appointment, transfers, leave, pay and allowances of all Gazetted Officers in the Judicial, Jail, Police, Motor Vehicles Deptt. etc. In addition there are some more subjects. B Branch deals with constitution of Civil and Criminal Courts, Coroners, Budget and administration of Civil Law, C.P.C., Criminal law etc. If this work is to be taken over by L.D.

both these branches will have to be transferred to L.D. excluding of course the work relating to recruitment, appointment etc of Police, Jail and Motor Vehicles officers. An officer of the status of Asstt. Secy will be necessary to supervise this work and to assist the Secy, L.D. If H.D. staff is to be transferred to L.D. then it is suggested by the office that the seniority of L.D. staff should be respected.

The second recommendation made in the same para is that litigation should continue to be dealt with in L.D. as at present but that a separate Bureau of legislative Drafting under an officer who has specialised in drafting should be constituted and attached to L.D. This office agrees on the first point but as regards the

second it is pointed out that the drafting branch is as important, if not more, as the opinion branch and therefore the legislative branch should be part and parcel of L.D. and not a Bureau attached to L.D. It is mainly on account of drafting, by which policies of Govt. are carried out, that L.D. is a deptt. of Govt. and not a subordinate office doing expert's work.

The members in both the sections should be interchangeable at least in the *beginning*.

The third recommendation made by the Committee is that with a view to ensuring that the facts are presented in a convenient form three posts of legal assistants drawn on the cadre of L.D. should be sanctioned in the Revenue, Home and Local Govt. Deptt., from which most of the references to L.D. come. This recommendation may be tried but to make it successful it is suggested that the local Asstt. should be of the status of Suptt. If an inexperienced junior or senior asstt. is appointed he would not be able to do any useful work for the Deptt. or would not be able to relieve L.D. of even simple cases. That none of the present Supts. cannot be spared should not be the reasons for trying the experiment with Assistants. If it is desired to make the scheme a success, the beginning should be made as suggested above.

64/2/7. 66/2/7
66/-
22/7/48. 66/-
22/7

S.A.S.

I have stated in the marginal notes my views in brief of the proposals. To save all complications as suggested at 'A' on p. 10 it will be necessary in due course to fill up the posts by recruitment of law graduates.

2. The suggestion made in para. 88 to convert the Legislative Branch into a separate bureau of Legislative Drafting is not proper. As implied in para. 91 of the report, a bureau concerned with the ~~more~~ important business of Government

No one can deny that the legislative work is very important and cannot, therefore, be entrusted as proposed, to a mere bureau.

The proposal to send Legal Assistants to the Departments would be conducive to better work. I think a Senior Assistant ought to be able to present facts in a convenient form and express opinions on simple cases, particularly on those covered by R.L.A.'s opinions.

3. I wholeheartedly support the recommendations made in para. 130 of the report. L.D. has long felt the need of an Assistant Secretary who can be in sole charge of administrative work of L.D. In the interest of discipline, order and smooth work it is essential that there should be an Assistant Secretary who can devote his time to office supervision and control of staff. Such an Assistant Secretary can also give proper instructions to the Superintendent regarding disposal of cases. He can also attend to tapal.

4. In the absence of information regarding Whitley Council it is not possible to say how far the establishment of such councils will be detrimental to maintenance of discipline in office. Unless an Assistant Secretary has full control of the staff, efficiency is bound to suffer.

5. The suggestions made in para. 135-136 regarding noting cannot be wholly followed in L.D.

6. The suggestion made in para. 137 of the report that the R.L.A. should be given a clear statement of the points on which his opinion is sought, and the recommendations made therein regarding appointments of Legal Assistants, will

Legal Assistants, will tend to expedite the disposal of cases. It cannot be denied that it is a valuable suggestion.

sd/-
22/7.

Secy. 7. As regarded the suggestion in para 407 attention is invited to R.L.A.'s opinion No. 3792 dt. 19/4/48 Slip A.

Secy. sd/-
22/7.

The Legal Department is concerned with the following recommendations of the Administrative Enquiry Committee (see Paras 98(5) and 130):-

- (1) Transfer of Justice from the Home Department to the Legal Department.
- (2) Constitution of a separate Bureau of Legislative Drafting.
- (3) Attaching of Legal Assistants to the Home Department, Revenue and Health and Local Government Department.
- (4) Appointment of Assistant Secretaries who should primarily attend to office supervision, control of staff and accounts.

2. As regards recommendations (2) to (4) the Legal Department has already taken action. Proposals for the reorganisation of the Department were submitted to Government and Government have sanctioned the same. According to the reorganisation scheme the Legal Department will have a separate Legislation Branch with an Additional Secretary at the head. The Branch will be in sole charge of all legal drafting both

principle and subordinate.

3. It has been decided to attach legal assistants to the three Departments. The Legal Assistant shall be a person who has worked in the appropriate sub-branch of the Legal Department for some years. He will be maintained on the permanent establishment of the Legal Department but his salary etc. will be debited to the administrative Department where he is for the time being serving. His tenure in the Administrative Department shall not exceed three years.

4. It has also been decided to appoint a separate Asstt. Secretary who shall be in charge of all administrative work of the Deptt.

5. As ~~regards~~ regards the transfer of justice from the Home Department to the Legal Department, Government has already taken a decision in the matter and according to that decision the subject relating to Courts will have to be taken over by L.D. Action to implement the decision will be taken after Government fixes the date on which the subject should be transferred to L.D.

6. It may be mentioned here that in accordance with the Committee's recommendation both ~~Industrial~~ Industrial and Labour Courts should also come under the Legal Department. The reasons which have induced Government to agree to the transfer of the subject of civil courts to the Legal Department apply with equal, if not with greater force, to the Industrial and Labour Courts. If as proposed Justice ~~is~~ transferred from the executive Deptt. and the Industrial and Labour Court continue to remain under the Labour Department any suspicion that might be lurking in the mind of labour that the Courts are the handmaid

handmaid of the executive is bound to be strengthened and that will not be conducive to the peaceful and harmonious relations between the Government and labour. Secretary Labour Department seems to be against the transfer of these courts to the Legal Department and the ground urged by him against the transfer is that it would involve delay in getting the disputes settled. But this does not seem to be a valid ground. [^]Whenever any disputes are referred to the courts, it will be always open to the Labour Department to ask the Courts to give priority to any particular dispute referred to them in view of the urgency of the matter. The Labour Department can also get in touch with the Secretary, Legal Department and get the hearing of any particular dispute expedited by the Courts. Indeed in their recent U.I.A.A. dispute the Legal Department gave instructions to the Advocate General and was from the beginning to the end in charge of the case as if it were an administrative Department.

7. For similar reasons it would be necessary to remove the Commissioner for Workmen's Compensation from the control of the Labour Department.

8. One more recommendation made by the Committee is as regards the delegation of work to Secretaries.

The cases which are submitted to H.M. (L) from 'A' Branch are:

(1) Criminal appeals and applications for condoning delay in ~~submitting~~ filing them in the High Court.

(2) Civil and Criminal matters which involve a total cost of Rs. 15,00.

The cases which are submitted to H.M. (L) and H.P. from 'B' Branch are:

(1) Cases relating to electoral rolls and elections and by-elections ~~and~~ of the B.L.A. and B.L.C.

(2) Cases relating to summoning and prorogation of the sessions of the Provincial Legislature.

Rules relating to Provincial Legislature and members thereof.

(i) Bombay Legislative Assembly Rules.

(ii) Bombay Legislative Council Rules.

(iii) Bombay Legislative Chambers
(Governor's) Rules.

(iv) ~~xxxx~~ Bombay Legislature Members' Salaries
and Allowances Rules, 1938.

Law Officers' Rules and Law Officers

(Conditions of Service) Rules.

The cases which are submitted to H.M. (L) and H.P. from C Branch are:

(1) Leave and appointments of the Gazetted Officers in L.D.

(2) Leave and appointments and D.G.Ps. and P.Ps and A.G.Ps.
and A.P. Ps.

(3) Appointments of Advocate General, Public Prosecutor,
Solicitors to Government, Govt. Pleader, High Court, and
~~xxx~~ his Assistants.

Orders may be passed as to which cases need not hereafter be submitted to H.M. (L) and H.P.

sd/-
8/11

Secy.

Madhav Raokadar
30/5. c/5.

Legal Department.

The Legal Department is concerned with the following recommendations of the Administrative Enquiry Committee (see Paras. 98(5), 125 and 130):—

- (1) Constitution of a separate Bureau of Legislative Drafting.
- (2) Attaching of Legal Assistants to the Home Department, Revenue and Health & Local Government Departments.
- (3) Appointment of Assistant Secretaries who should primarily attend to office supervision control of staff and accounts.
- (4) Transfer of Justice from the Home Department to the Legal Department.
- (5) Delegation of work to Secretaries.
- (6) Recommendations regarding Industrial and Labour Courts and the Commissioner for Workmen's Compensation.
- (7) Recommendation that the Public Service Commission be consulted in making appointments to the posts of Solicitor to Government, Assistant Public Prosecutor for Bombay, Assistant Public Prosecutor for Bombay, Government Pleader, High Court, Bombay, and District Government Pleaders.
- (8) Bills introduced in the Legislature should invariably be accompanied by a memorandum stating the implications if any.

2. The first recommendation was separately under the consideration of the Legal Department and action has already been taken thereon: Vide G.R.L.J. No. 10302, dated the 18th November 1948. ~~But~~ Instead of a separate Bureau of Legislative Drafting, a separate Legislation Branch has been created with an additional Secretary at the head. This has met with the approval of the Secretaries Committee: vide the decision on item No. 17 of the Digest of Conclusions.

3. The second recommendation has also been accepted by

Government. The Legal Assistant shall be a person who has worked in the appropriate branch of the Legal Department for some years. He will be maintained on the permanent establishment of the Legal Department, but his salary etc. will be debited to the Administrative Department where he is for the time being serving. His tenure in the Administrative Department shall not exceed three years.

4. The third recommendation has been incorporated in G.R.L.D, No.10892, dated the 18th November 1948.

5. The fourth recommendation regarding the transfer of justice from Home to the Legal Department was considered and accepted at the Secretaries' meeting. The consequent re-grouping of subjects now mostly assigned to the Home Department has also been settled at the Secretaries' meeting. The decisions taken will presumably be separately submitted by the Chief Secretary for final orders.

6. The fifth recommendation concerns the delegation of work to Secretaries regarding which a separate note is submitted in a linked case.

7. The sixth recommendation concerns the placing of the Labour Courts and the Industrial Court as also the Commissioner for Workmen's Compensation under the Secretariat Department in charge of justice. If the fourth recommendation is accepted by Government, this Department will presumably be the newly reorganized Department of Law and Justice. This question has been separately noted in the two linked cases.

8. This question has been considered in my note sent to F. D. on 19/4/1948 (copy attached). The subject belongs to F. D. and Secretary, F. D. has agreed that it should be ~~not~~ dealt with in the F.D.

sd/- P. M. L.

16/1

sd/-

16/1

Office of the R.L.A.

Apart from the provisions of section 82 of the Government of India Act, 1935, to which Instruction 28 relates, there is no provision requiring a reference to the Finance Department of any case for legislation with a view to approving its financial implications of a legislative measure particularly when they involve additional expenditure should be carefully worked out before the draft legislation is finally published. The English practice^{ce} (which could have been easily ascertained by a reference to this Department) is primarily intended for this purpose and also for the purpose of informing the ~~Parliat~~ Parliament and the public of the financial consequences of a legislative measure.

2. From the practical point of view the important question is at what stage should a financial memorandum be got prepared. The really relevant stage is naturally before the tentative draft is prepared by the Legal Department. The administrative Department would then be required to formulate the financial consequences of the proposed measure and submit them to the Finance Department for its scrutiny and approval. The Finance Department would then get an opportunity of studying the measure from the financial point of view and make its representations, if any, to Government so that Government may finally decide whether the propositions should be crystallised into a tentative draft. Care must next be taken to see that the final draft does not introduce such radical changes as to ~~in~~ effect the financial estimates contained in the memorandum. If perchance such changes are made, the Finance Department must naturally have

another opportunity of scrutinizing the modified or additional proposals; and the memorandum would have to be revised so as to bring it in conformity with the final draft.]

3. I gather from the Secretary, Finance Department, that the primary object of a financial memorandum is that his Department should get a correct idea of the financial consequences

of a legislative measure. He would have no objection if the memorandum is communicated to the Members *of the legislature or to the public like the statement - of* Objects and Reasons.

It is a matter for consideration whether it may not be of advantage to keep the Legislature and the public informed of the financial consequences of any particular legislative measure. That seems to be the underlying idea of the British Parliamentary practice whereunder a financial and (or) explanatory memorandum though not technically part of the Bill is often printed and attached to it. That practice has much to commend in its favour, and if it is to be adopted, we shall have to amend the Bombay Legislative Assembly Rules which deal with Council Statements of Objects and Reasons with a view to adding thereto a financial memorandum also.

P.M. Lad.

Remembrancer of Legal Affairs.

U. R. to F.D.No. 3792, dated the 19th April 1948.

Madhav R. [Signature]

20/5. c/5.

Para 285 of the Report of the Administration
Enquiry Committee.

285. The same considerations apply to the Commissioner for Workmen's Compensation who performs judicial functions under the workmen's Compensation Act and the Payment of Wages Act. He too should be removed from the Labour organization and placed under the department ~~which~~ which deals with Justice.

—

In view of the proposal/ in another file that the Industrial Court and Labour Courts should remain under the Labour Department and not transferred to the Legal Department, the analogy may be extended to the Commissioner for Workmen's compensation also.

sd/- W.K.D.
22/7/48.

Secy. L.D.

Fin. (Adviser)

C.S.

H.M. (Lab.)

Raghav Rookedat.
20/5. c/5.

Paragraphs 284 and 285 of the Committee's Report deal with this question. The reason underlying the Committee's recommendation is the necessity of removing the suspicion that these Industrial and Labour Courts are in a sense subordinate to the Executive, and to avoid criticisms and allegations that they are merely limbs of the Labour Administration. In other words, it is the anxiety of the Committee that fullest confidence should be inspired in the public mind in the working of justice as administered on the labour side. They ^{have} applied to this branch of justice the same principles which have led to the proposals of separating the executive from the judiciary. Once this reason underlying the recommendation is fully appreciated, it follows x that all arguments founded on mere convenience will have to be subordinated to the fundamental principle that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

2. That same principle disposes of the comments made by the Secretary, Labour Department, that there has in fact been no interference at any time in the working or awards of these courts on the sides of Government in the Labour Department; for, it is not so much the fact of actual interference ^{as the necessity of convincing the public that there is no possibility of interference.} ^{whatever} which is responsible for the recommendation.

3. I do not quite follow how Labour Administration will suffer if the Courts are brought under the Department of Justice. It will be readily conceded

conceded that the judicial function of deciding the dispute must be left entirely to the Courts, and the Labour Department cannot possibly make any contribution in the discharge of that function. On the other hand it is precisely to prevent the Labour Department conveying in ~~the~~ the remotest degree their point of view to the Courts that the recommendation is made of placing the Courts under the Department of Justice. The Legal Department has been of considerable help so far in assisting the Courts through its law officers in deciding important points of law. Thus, for example, in the recent *U.I. A. A. dispute* or in cases which arise out of ~~the~~ the transfer of adjudication proceedings, it was the Legal Department which, as in any other case of litigation, had worked up the case through its law officers and presented it to the Court. Proceedings in Labour and Industrial Courts, though specialized, must for purposes of actual conduct be treated on the same footing as proceedings in ordinary Courts or before specialized Tribunals like the Revenue Tribunal, the Sales Tax Tribunal or the new Co-operative Tribunal ~~as the~~ and it has been accepted that the actual conduct of such business must be in charge of the Legal Department. It is true that the Labour Department best know the pulse of the labour situation and the urgency of the particular disputes for priority of settlement. That knowledge and the desirability of giving special priority to ~~certain~~ certain pending disputes can be best placed before the Industrial and Labour Courts ~~that~~ through the law officers who will be in charge of the conduct of proceedings. There ~~is~~ is no reason to suppose that the Industrial Court and

Industrial Court and Labour Courts which are exclusively concerned with labour disputes will not themselves be fully alive to the necessity of expedition and to the comparative priority to be given to several disputes and to the relative urgency of settling certain disputes. We can appoint law officers in these courts who will take watching brief on behalf of Government and convey to the Court any representation which the Labour Department may have to make about expediting certain proceedings or giving priority to them. In such matters of fixing the board or acquainting the Court with the administrative point of view, its law officers may take instructions direct from the Labour Department; in fact they may be agents of the Labour Department. Merely for the purpose of arranging the boards of the Courts with a view to expedition, it is not necessary to place the Courts under the Labour Department. The rather gloomy forebodings of the Secretary, Labour Department of labour disputes developing into several year old matters and labour taking the situation in hand with its own weapons and removing the need for these courts, are, in my opinion, not quite well-founded. In the first place, these are specialised courts which do not other business. They are manned by responsible persons having at the head a retired High Court Judge. They can be fully trusted to realize their responsibility and to attend to the work in hand with utmost expedition with special regard

regard to the relative urgency of any particular disputes. The change in the controlling Department cannot in the least affect the congestion or otherwise of the business pending in the Courts. In order to keep a watch over the progress of business, returns may even be prescribed which will be submitted to the Legal Department through the President of the Industrial Court, and by that method, we can keep a constant control on the disposal of arrears.

4. I am, therefore, inclined to support fully the recommendation of the committee. However, before taking final decision, I would suggest that as this question vitally affects the position of the Industrial Court, we should also consult that Court and elicit their views.

5. There is no reason to extend the analogy to the Workmen's Compensation as suggested by the Secretary, Labour Department. In fact, most of the work of workmen's compensation in the mofussil is done by Civil Judges and would thus automatically come under the reorganized Legal Department. The work done by the Commissioner for Workmen's Compensation is entirely of a judicial character, and there is no reason to have two separate systems in this matter. I do not think the Labour Department can make any useful contribution which will help in the efficient and expeditious disposal of claims for workmen's compensation. I would, therefore, support the recommendation made by the Committee.

Id/- 16/1

ed/- P.M.Lod.

H.M. (L) H.M. (Labour)

Nadhar Raghoban.
30/5. c/5.

Minutes of the Meeting of the Secretaries to Government held in the Committee Room at 2-30 p.m. on Friday the 23rd July 1948.

PRESENT:

Mr. H. D. Bhut (in the Chair),
 Mr. D.S. Fakhle,
 Mr. V.H. Sardesai,
 Mr. D.H. Mehta,
 Mr. H.K. David,
 Mr. P.M. Lodi,
 Mr. B. Venkatappiah,
 Mr. L. T. Ghole,
 Mr. D.S. Joshi,
 Mr. H.P. Gurjar,
 Mr. J. Santos,
 Mr. A.L. Dias)
 Mr. B.S. Vyasa) were unable to be present.

Business:

The following decisions were arrived at in respect of the recommendations contained in Chapter VI of the Administrative Enquiry Committee's Report :-

Paragraph 91 :- The principle was accepted but in the case of the Legal Department it was felt that the section dealing with drafting should be a part of the Department and not a separate bureau.

Paragraph 92 to 95 :- As these paragraphs are merely descriptive, no comments are called for.

Paragraph 96 :- The principle was accepted.

Paragraph 97 :- Opinion was divided on the question whether Local Self Government and Public Health Department should be split into two separate Departments. One section held that after accepting the principles expounded in paragraph 96, there would hardly be any justification for keeping the Local Self-Government and Public Health Department in tact even though the two subjects are closely linked with each other, while the other section was of the opinion that if a Deputy Secretary continued to assist the Secretary in his work, it would be conducive to ~~efficiency~~ efficiency if the Local Self Government and Public Health Department is continued as one Department and not split into two separate Departments.

as at present

Paragraph 98 :- The recommendations were accepted, but in the case of Trade and Industries Department it was considered necessary that village industries should be transferred as soon as possible to that Department.

Paragraph 99 :- The division of the Secretariat into 13 Departments subject to the views expressed above in regard to the division of the Local Self Government and Public Health Department into two separate Departments, was accepted.

Paragraph 100 :- No comments are called for.

Paragraph 1011- The recommendations that the Chief Secretary's services should be utilised for co-ordination of all important matters originating in other Departments, for Cabinet work and for services was ~~xxx~~ accepted. It was agreed that the question as to how his other work could be transferred to other Departments required examination.

The Separate Department should be abolished but the organisation of this Department should be placed under the Chief Secretary. The question of giving it some other name should be considered.

Madhav Raokadam.

30/5. c/5.

No. 3063/46-B.
Political and Services Department,
Bombay Castle, 5th
August, 1948.

Subject: Administrative Enquiry Committee.

Implementation of the recommendations
of the ~~Administrative Enquiry Committee~~

MEMORANDUM.

The undersigned presents compliments to the Secretary to Government Legal Department and in inviting a reference to paragraphs 130 and 131 of the Report of Administrative Enquiry Committee, is directed to state that the Committee has made the following recommendations in order to improve the procedure in the Secretariat:

Paragraph 130- A.: Assistant Secretaries should primarily attend to office supervision, control of staff and accounts and should not ordinarily note on files.

Paragraph 131- Assistant Secretaries should form a Committee for handling the Organisation and Methods work of the Secretariat.

It is requested that the Committee's recommendations may duly be considered and this Department favoured with the remarks of the Legal Department in the matter.

By order of the Governor of Bombay,

J. CHAVES,

For Chief Secretary to the Government of Bombay,
Political and Services Department.

Radhakrishnan,
30/5. c/5.

Subject :- Administrative Enquiry Committee.

Implementation of the recommendations
of the

MEMORANDUM.

The undersigned presents compliments to the Secretary to Government, Legal Department and in inviting a reference to paragraph 133 of the Report of the Administrative Enquiry Committee, is directed to say that for the reasons stated therein the Committee has made the following recommendations:-

- (1) Superintendents should be relieved of original noting work and should confine themselves to supervision, and
- (2) Branches could then be increased in size and those that are dealing with allied subjects should be amalgamated and placed under one Superintendent.

It is requested that the Committee's recommendations may duly be considered and this Department favoured with the remarks of the Legal Department thereon at a very early date.

By order of the Governor of Bombay,

J. CHAVES.

For Chief Secretary to the Government of Bombay,
Political and Services Department.

Madhav Bhokadkar.
31/5. c/5.

VERY URGENT.

45.

GOVERNMENT OF BOMBAY
Political and Services Department,
Circular Memorandum No. 3235/46.
Bombay Castle, 11th August 1948.

CIRCULAR MEMORANDUM.

The attention of all Departments of the Secretariat (except the Relief and Rehabilitation, Reconstruction, Civil Supplies and Separate Departments) is invited to paragraphs 372 and 373 of the Report of the Administrative Enquiry Committee and they are requested to review the posts at present excluded from the purview of the Bombay Public Service Commission so far as they are respectively concerned in the light of the observations and recommendations made by the Administrative Enquiry Committee and to communicate their remarks to this Department at an early date with special reference to the question whether or not the posts should be brought back within the Commission's purview. The Legal and Home Departments are specially requested to examine the recommendations made by the Administrative Enquiry Committee in paragraph 373 of its Report and to favour this Department with their views whether the posts mentioned there so far as they are respectively concerned, should be brought back within the Commission's purview.

By order of the Governor of Bombay,

M.D. BHATIA

Chief Secretary to the Government of Bombay,
Political and Services Department.

Madhav Bhaskaram.
31/5. c/5.

Legal Department.

was question was considered in 1936-37 when the constitution of 1935 was about to come into ^{to} force. Attention is invited to the notes at p. nos 65-70 of the L.D. Volume ^{line} PSC(1936-40). At the ~~time~~ it was ~~decided~~ decided to exclude the following posts from the purview of the Public Service Commission:-

- (1) The Advocate General.
- (2) The Solicitor to Government and Public Prosecutor for Bombay.
- (3) The Government Pleader, High Court.
- (4) The District Government Pleaders and Public Prosecutors and their Assistants and Hon. Assistants to Government Pleaders.

Up to October 1933 the post of Solicitor to Government and Public Prosecutor was held by one of the partners of Messrs Little & Co. In November 1933 it was split up into the following:-

- (1) Solicitors to Government (Messrs Little & Co.)
- (2) Solicitor in the Legal Department.
- (3) Asstt. Solicitor in the Legal Deptt.
- (4) Public Prosecutor for Bombay.

In view of the decision arrived at in 1936, these posts ~~was~~ were also excluded from the purview of the Commission (Please see Secretary's (Mr. Muranhar) note of 8/12/1936. and the minute of H.L.(II) dated 12-12-1933 at p.74 of L.D. volume Fin. PSC/1936-40). Subsequently the posts of Solicitors in the Legal Department were brought within the Commission's purview (vide G.O. P. & S.D. No 1969/34 dated 26/1/1944 and items 133 and 134 in Schedule I to the Bombay Public Service Commission (Functions) Rules, 1947).

The present position, therefore, is that the Solicitor to Government and Assistant Solicitors to Government are brought within the purview of the Commission. The remaining posts mentioned in para. 373 of the Administrative Enquiry Committee's Report are all posts of what are known as Law Officers who are not whole-time Government servants but who get a retainer and are allowed ~~an~~ fees per diem or per cause. Even the post of Public Prosecutor for Bombay will now fall under this class, for Government have already accepted the proposal that the Public Prosecutor should be the principal Law Officer in the newly established City Sessions Court.

This is a peculiar class of posts which it will not be advisable for various reasons to bring within the purview of the Public Service Commission.

(1) The Commission should primarily be concerned with the appointments to posts in what is commonly described as the permanent Civil Service. As the Committee rightly point out, in respect of such posts it is essential to shield Government from political pressure and to prevent a possible suspicion in the mind of the public that any particular appointment has been excluded on grounds other than the public interest. These considerations cannot apply to part-time posts of law officers which in all democratic countries are expected to have some political and tinge about them. If these posts are to be brought within the scope of the Public Service Commission, there is no reason why the post of the Advocate General, the appointment to which is now longer made by the Governor in his individual judgement, should also be similarly brought within the Commission's purview. In fact, in England and other democratic countries the Attorneys General and the Solicitors General are entirely political

political officers. Although our Law Officers are required not to be members of political parties, they must at least be capable of working in close harmony and co-operation with the Government of the day. The Solicitor and the Assistant Solicitor in the Legal Department stand on an entirely different footing, for they are in fact members of the permanent Secretariat Civil Service.

(ii) These are all part-time appointments so that no question of security ~~is~~ or tenure of promotion arises. They are substantially on a contract basis and for that reason need not be referred to the Public Service Commission.

(iii) If these posts are brought within the purview of the Public Services Commission, we shall be obliged to invite applications. No lawyer worth the name, who aspires to be the Advocate General or the Government Pleader, High Court, or even a Government Pleader in a District Court would care to apply and appear before the Public Service Commission for selection.

(iv) The Public Service Commission is not well equipped for judging the merits of the candidates in the field. It is only the Judges before whom the candidates have practiced who can give first-hand information about their ability and character. The Judges and local officers submit their recommendations to Government and the R.L.A., who is himself a Judge having experience of a number of districts, scrutinises these recommendations in the light of his own knowledge. Government thus get all the ~~advice~~ advice they need and the Public Service Commission is not likely to make any further contribution. In the case of the law officers in the High Court Government gets the benefit of the advice of the High Court Judges themselves and as far as possible

the appointments~~are~~ are made with due regard to their recommendations.

sd/-P.M.L.
16/1.

Madhav R. Gokadam. 31/5. c/5.

Office of the Relator

The arguments in favour of the Committee's proposals are as follows:-

(1) It is the anxiety of the Committee that the fullest confidence should be inspired in the public mind in the working of justice administered on the labour side. They obviously follow the fundamental principle that justice should not only be done but should manifestly and undoubtedly seem to be done.

(2) The practice regarding Labour Courts seems to vary; but it appears that on the Continent the Labour Courts are under the jurisdiction of the Ministry of Justice; but appointments, etc., are made in consultation with the Ministry of Labour and sometimes even the Ministry of Agriculture and Social Welfare (see the examples of France, Germany, Poland etc. as given in the book "Labour Courts" published by the International Labour Office). In England the Trade Boards seem to be under the administrative control of the Ministry of Labour. It is the Minister of Labour who constituted them. No information is immediately available about Australia and New Zealand but it is of interest to note that in Ireland the work of the Commissioner for Workmen's Compensation is assigned to the Ministry of Industry and Commerce and to the Ministry of Justice.

2. On the other hand, it is felt that the apprehension which the Committee entertains has not been voiced anywhere so far. The arguments against the proposal can be based mainly upon the practical difficulties, the principles of which are as follows:-

(1) The control of the Department of Justice cannot in any case be extended to some of the judicial bodies subordinate to and ancillary to the Industrial Court, e.g. Wage Board and Standardisation Committees. The former are

Statutory bodies and the Department of Justice would not be competent

constituted at the instance of the Industrial Court, can be constituted ~~and~~ only by the Labour Department which has special knowledge of the problems and of the persons conversant with them.

(11) As regards the constitution of the principal courts, namely, the Labour Courts and the Industrial Court, although the notification is being issued by the Labour Department, in fact, appointments are made in consultation with the Public Service Commission in the case of Labour Courts and with the approval of the Political and Services Department for the Industrial Court. Statutory qualifications are also laid down for the Judges of the Industrial Court. In practice, therefore, independence in appointments is thus completely guaranteed; and in respect of independence the position is not likely to improve by transferring this work to the Department of Justice, excepting that we can create an appearance in the Public minds that the appointments are made by, because they are being issued in the name of, the Department of Justice. It is for consideration whether the same result may not be achieved by the notification being issued under the signature of the Chief Secretary, which was the suggestion made by the President of the Industrial Court.

(11) As regards the appointments of an Adjudicator, unless he is a High Court Judge or a District Judge appointments are to be made in consultation with the High Court and are invariably made on their recommendation as also the recommendation of the President of the Industrial Court. No further advantage in respect of independence in appointment would accrue by transferring this work to the Department of Justice.

It may become necessary hereafter to extend the Act to several cases which will mean either the expansion of the present

present courts or the consideration of new courts. Naturally the Department of Labour would be more competent to judge whether expansion is necessary or whether a new court is needed and also to make suggestions regarding its size, etc. It is the Department of Labour ^{which} ~~which~~ will have to make out a case ~~for~~ ^{for} the additional expenditure for the consideration of the Finance Department. The Department of Justice may not press the case ^{as} ~~with~~ the same enthusiasm as the Department of Labour.

(v) At present the Department of Labour is held responsible for the working of the Industrial Court and all questions, etc., (even in the Assembly) in respect of delays or other matters connected with the Court are disposed of by the Minister of Labour. It will be difficult to disentangle from any such questions the part assigned purely to the judicial proceedings of the courts and other matters connected with labour will ~~extricably~~ be mixed with such questions so that it is for consideration whether the Minister in charge of Labour would not be in a better position to deal with such questions than the Minister for Law and Justice.

3. The reference to these Courts must necessarily be made by the Department of Labour. But once such reference ~~is~~ made, the Department of Labour need not be in direct connection with the Court for watching the progress of the adjudication. That can be achieved by placing at the disposal of the Department of Labour a law officer who will be its representative in the Court as the Police Prosecutor in a magistrate's court is. It will be his duty to ensure under instructions from the Department of Labour that disputes which deserve priority are dealt with earlier and are disposed of with due expedition. The need for such a provision, etc., can be gauged by the Department of Labour in consultation with labour leaders and employers who are naturally in

active touch with the Labour Department.

P. M.L.

Remembrancer of Legal Affairs.

Madhav Rao Kadam.
31/5. c/5.

Legal Department,

Bombay Castle (Bombay No. 1), 2nd February 1950.

Subject:- Report of the Administrative Enquiry
Committee--

Implementation of the Recommendation
contained in the -----
Revised procedure for---

MEMORANDUM.

The undersigned presents compliments to the Secretary to the Government of Bombay, Finance Department, and with reference to that Department Circular No. 6745/33, dated the 6th April 1949, on the above subject is directed to send herewith the periodical report regarding action now taken by this Department on the implementation of the recommendations pertaining to this Department contained in the Report of the Administrative Enquiry Committee in the appended form.

By order of the Governor of Bombay,

Secretary to Government.

To

The Secretary to the Government of Bombay,
Finance Department.

Copy to:-

The Chief Secretary to the Government of Bombay,
Political and Services Department.

Madhav Ruckmanam.

31/5. c/s.

Report regarding action taken by the Legal Department on the implementation of the recommendations pertaining to the Legal Department contained in the Report of the Administrative Enquiry Committee.

Serial No.	Recommendation No. para of the Report and substance of the recommendation.	Stage of consideration	Probable date of disposal	Orders passed with their No. and date.	Net saving or additional expenditure to Government.	
					Annual recurring Rs.	Non-recurring Rs.
1.	25 (98) (5) Transfer of Justice from the H. D. to the L.D.	Accepted Exact date of transfer not fixed	The date on which executive is separated from the judiciary.	G.R.P. & S. D. No. 3063/46, dated 19-4-49	---	
2.	Constitution of separate Bureau of Legislative Drafting.	Accepted with a modification that instead of a separate Bureau of Legislative drafting a separate Legislation Branch has been created with an Additional Secretary at the head.	Already implemented	G. R. L.D.No. 10892, dated 18/11/48.	36,000 ,	
3.	Attaching of Legal Assistants to H.D. R.D. and H.& L. G. D.	Accepted	Posts sanctioned by F.D. for a period of one year in the first instance with effect from 1-4-50.	G. R.P.& S.D. No. 3063/46 dt.12/4/49.	5, 910	

N. B. Reasons for not implementing the recommendations are as follows:-
~~Not implemented after the decision of separation of Executive from the Judiciary in 1949~~

- Sr. No. 1 This will be implemented after the decision of separation of Executive from the Judiciary, is ~~called~~ *reached*.
- Sr. No. 2. Although the recommendations has not been accepted by Government, the post of Additional Secretary has been created and the Legislative Drafting work is entrusted to him.
- Sr. No. 3. The P. D. has decided that this should be created as new item in the next year's budget.

Madhav Rao Kadam.
31/5. c/5.

General Duty Clerks.

142. As we stated earlier every branch is served by a general duty Clerk, commonly known as a searcher, whose duties are purely routine such as searching for previous references and bringing necessary files. The usual practice seems to be not to give these clerks any noting work, and this causes difficulty in making a selection from them for every fourth vacancy reserved for them in Upper Division. We accordingly recommend that they should be given simple noting work and tried in officiating vacancies, so that their ability in noting and drafting can be tested before they are considered for promotion.

Madhav Raghavan.
31/5. c/5.

Administrative Enquiry Committee's
Report.

Recommendation made in paragraph
142 of the

Government Orders on-

Government of Bombay,
Political and Services Department,
Resolution No. 3063/46.
Bombay Castle, 6th April, 1948.

Resolution of Government.

In paragraph 142 of its report the Administrative Enquiry Committee has recommended that the General duty clerks should be given simple noting work and tried in officiating vacancies before promotion to the Upper Division. Government has carefully considered the recommendation and is pleased to direct that the recommendation should be accepted. Action should be taken accordingly by the Secretariat Departments.

By order of the Governor of Bombay,
M. D. Dhat,
Chief Secretary to the Government of Bombay,
Political and Services Department.

Madhav Raskadam.
31/5. c/5.

Legal Department.

The recommendation of the Administrative Enquiry Committee in paragraph ¹⁴² ~~22~~ that the 'general duty clerks' should be given simple noting work and tried in officiating vacancies is not feasible in the Legal Department. First of all in L.D. 'Maxwell-system' of work is not followed and hence the system of every fourth vacancy in Upper Division to be filled in by promoting lower division clerks is not practicable and desirable in as much as the Legal Department is a technical Department requiring legal knowledge as essential condition for the working of majority of its branches. The branches where legal knowledge is not essential are only two viz. Establishment and Record branches. The lower division members have got watertight compartment for ~~present~~ promotions to Upper Division in these two branches only and the Upper Division posts in these two branches have been reserved exclusively for them. At present, there is only one post of a Junior Assistant in these branches open to the lower division at the initial stage and that post is given to the members according to seniority and merits. In L.D. practically every clerk, with very few exceptions, has to do the simple noting work. Some of the clerks have to do simple work of noting on cases. This has led to the fact that by the time a clerk gets an occasion to act as Junior Assistant he has vast ~~experience~~ experience of noting work at his credit. There are no 'general duty clerks' in the Record and Establishment

Establishment branches but they are the exclusive feature of the technical branches where also they have to do the simple noting work but that does not ~~admit~~ admit their being promoted in the Upper Division in those branches where legal qualifications are considered essential by the Head of the Department for working in the Upper Division in those branches. Hence, the recommendation in paragraph 142 cannot be accepted as rule as far as Legal Department is concerned.

Id. S.V.D.
11/6,

Id. J.D.
11/6,

sd/- B.D. Pandit.
14/7/49.

Secretary ~~sd/-~~ sd/- P.H.L.
14/7.

Ladhav Rookadam.
~~sd/-~~ 31/5. c/5.

Administrative Enquiry Committee's
Report.
Recommendation made in paragraph 125
of the --- Government orders on-

Government of Bombay,
Political and Services Department,
Resolution No. 3063/46.

Bombay Castle 1st April 1949.

RESOLUTION OF GOVERNMENT.

In paragraph 125 of its report the Administrative Enquiry Committee has recommended that routine cases and matters governed by set rules should be finally disposed of by Secretaries. Government has carefully considered the recommendation and is pleased to direct that cases should be submitted to the Minister by the Secretary at the final stage and not at any intermediate stage and that each Secretary should prepare a statement showing the types of cases in respect of which the power of disposal should be of cases in respect of which the power of disposal should be delegated to the Secretary, Minister and submit it to the Minister for his orders. Action should be taken accordingly by each Department of the Secretariat.

By order of the Governor of Bombay,

M.D.BHAT.

Chief Secretary to the Government of
Bombay,
Political and Services Department.

To
All Departments of the Secretariat,
(except the Separate Department).

Nadhav Bhaskar
31/5. c/5.